Because of this potential for competitive harm, the Commission should not employ a presumption of lawfulness to foreign carrier entry for switched resale. Rather, the Commission should require such carriers to meet the conventional public interest test under Section 214 of the Act.

V. CO-MARKETING ARRANGEMENTS SHOULD BE SUBJECT TO DETAILED REPORTING REQUIREMENTS ANALOGOUS TO THOSE IMPOSED ON MCI/BT

The Commission proposed to exclude from its definition of "affiliation" non-exclusive co-marketing arrangements between U.S. and foreign carriers, but would require the filing of those arrangements. NPRM at ¶ 63. MCI showed that co-marketing arrangements, particularly between the dominant U.S. carrier and dominant foreign carriers, such as AT&T's WorldPartners, can have substantial anticompetitive ramifications and should be closely scrutinized by the Commission. See MCI at 12-13. Therefore, MCI requested that the Commission go beyond requiring the filing of the arrangements, since the mere filing of the terms is not an effective deterrent to anticompetitive conduct. Instead, MCI recommended detailed reporting requirements that should be placed on such arrangements, analogous to the requirements the Commission adopted in approving the acquisition by BT of an ownership interest in MCI. See MCI at 14-15. See also MFS International, Inc. at 8; ACC Global Corp. at 9.

There is general agreement among the commenters, including AT&T, that there should be some measure of supervision of co-

marketing agreements.[28] Some parties went beyond MCI's position and recommended that such arrangements be subject to prior Commission approval and thus subject to the effective market access test. See, e.g., MFS International at 8; ACC Global at 8. MCI believes that the type of close supervision outlined in its Comments, rather than a prior approval requirement, is sufficient to address anticompetitive concerns without impairing U.S. carriers' flexibility to negotiate beneficial arrangements with foreign carriers.

VI. POST-ENTRY SAFEGUARDS

A. Definition of "Affiliate" Post-Entry

For post-entry regulation purposes, a U.S. carrier affiliate of a foreign carrier is regulated as dominant when the U.S. carrier controls, is controlled by, or is under common control with the foreign carrier. In the NPRM the Commission asked whether it should conform this definition of "affiliation" to the definition used in applying the effective market access standard for entry purposes, e.g., an investment interest in excess of ten percent by the foreign carrier in a U.S. carrier. NPRM at ¶¶ 65-66.

MCI disagrees with those commenters that argued that for consistency's sake the post-entry definition of affiliate should be conformed to the pre-entry definition adopted in this proceeding. As MCI explained, there is no reason to change the

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28. See, e.g., AT&T at 20; FT at 12-14.

post-entry definition of affiliate merely to be consistent with the pre-entry definition because there are different concerns involved in each case. See MCI at 16-17.

AT&T, for example, argued that the two definitions should be identical because "post-entry regulation of foreign carriers in the U.S. market focuses on the prevention of discrimination by a foreign carrier in favor of a U.S. affiliate," and that "[t]his is also a major objective of the Commission's effective market access test." AT&T at 45. However, in the entry context the Commission's major goal is to encourage foreign administrations to open hitherto closed markets to competition by U.S. carriers. To gain the requisite leverage, the Commission proposed an ownership threshold lower than control. Once the Commission decides to permit a foreign carrier to enter the U.S. market, an entirely different set of concerns comes into play. To date, the Commission has been satisfied that in cases with ownership levels amounting to less than control, dominant carrier regulation is unnecessary and that there are other measures that can be used to ameliorate any danger of discrimination or other public interest concerns. AT&T has not offered any reason why this approach is suddenly incorrect.

As BTNA explained, tying the post-entry definition of "affiliate" to control serves one purpose, while "[t]he lower 10% investment threshold is appropriate for the more significant consideration of whether a foreign carrier that is dominant in its home market should be permitted to participate in the U.S.

international marketplace." BTNA at 8 n.13. There is no rational basis to change the post-entry definition of affiliation merely for the sake of conforming it to the pre-entry definition when the reasons behind the two definitions are different.

B. The Commission Should Prohibit International Refiling

The Commission requested comment on whether it should expressly prohibit a foreign carrier or its U.S. affiliate from refiling U.S. originating or terminating traffic without the consent of the originating or terminating countries. MCI strongly supports such a prohibition. See MCI at 24. Sprint, however, requests that the Commission consider and expeditiously resolve this issue in the context of MCI's Petition for Declaratory Ruling in ISP 95-0004 regarding Sprint's refiling practices. Sprint at 40. MCI does not oppose that recommendation, and supports Sprint's request for expeditious resolution of its Petition.

VII. THE EFFECTIVE MARKET ACCESS TEST SHOULD ALSO BE INCORPORATED IN THE PUBLIC INTEREST ANALYSIS UNDER SECTION 310(B)(4) OF THE ACT

MCI supported the Commission's application of the effective market access test in making its public interest findings under Section 310(b)(4) for the same reason that it supported use of that test in making the public interest entry decision required by Section 214 -- as leverage to encourage foreign administrations to open their markets to competition by U.S. carriers. MCI at 25-28. There is broad agreement among the

commenters that the resolution of the legal and policy issues with respect to application of the test in the context of Section 214 should also apply in the context of Section 310(b)(4).[29]

Those parties that disagreed with the proposal to apply the effective market access test under Section 214 also opposed application of the test under Section 310(b)(4). NYNEX, for example, would automatically grant a waiver, and would place the burden on an opposing party to "convincingly make[] the case that a waiver would not be in the public interest." NYNEX at 6. Sprint similarly argued that foreign carrier interests exceeding the 25 percent statutory benchmark but involving less than a controlling interest should be considered to be prima facie in the public interest. Sprint at 36.

MCI opposes both of these proposals for the same reasons it disagrees with using a "control" threshold for Section 214. Automatic waivers would allow transactions with a significant potential for abuse to go unchecked. It should not be incumbent on other carriers to have the burden of proof that such transactions are not in the public interest. Such a procedure would provide no incentive for foreign administrations to open their markets. Thus, in order to accomplish its goals in this proceeding the Commission should apply the effective market access test in making its public interest determinations under Section 310(b)(4).

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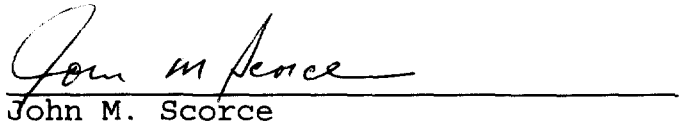
29. See, e.g., AT&T at 38; Sprint at 35; DT at 8; FT at 28.

CONCLUSION

For the reasons stated herein and in MCI's Comments, the Commission should adopt the proposals set forth in its NPRM, modified as recommended by MCI.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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I, Girdie M. Kelly, hereby certify that a copy of the foregoing **REPLY COMMENTS** has been sent by United States first class mail, postage prepaid, unless otherwise noted, to the following parties on this 12th day of May, 1995.

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